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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,256	12/02/2003	John McDonald	FCMCCG.002DV1	3528
29995 7590 07/23/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
ACKUN, JACOB K				
ART UNIT		PAPER NUMBER		
3728				
NOTIFICATION DATE		DELIVERY MODE		
07/23/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/726,256

Applicant(s)

MCDONALD ET AL.

Examiner

Jacob K. Ackun Jr.

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/27/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-41, 43-46 and 74-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-41, 43-46 and 74-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 33-35, 37, 43, 44, 46 and 74-86 rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith et al. (6,311,843). The rejection is set out in the last office action and is incorporated herein in its entirety by reference.
3. Claims 33-41, 43-46 and 74-86 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ridgeway (5,388,701). Note the teaching of the arched sides allowing the frames to overlap one another. This is analogous to the claimed nesting engagement. The tapered portions of previously allowed claims, such as claims 36 and 38, can be read on relevant portions of the Ridgeway frames including portions of the arched sides. Elements of the claims not expressly taught by Ridgeway, but conventional in the art, would have been obvious modifications to the device of Ridgeway, for the purpose of improving the same.
4. Applicant's arguments filed 5/27/08 have been fully considered but they are not persuasive. As to the argument regarding the rejections over section 102(b) of the Statute and corresponding section 103(a) rejections, the examiner acknowledges the parent applications pointed to by applicants. However, a review

of those files does not indicate that the specific embodiments rejected were disclosed in the earlier applications. Said differently, the parent applications identified by applicants do not appear to support the embodiments that are the subject of the noted rejections. Accordingly the relevant filing date as to those rejected embodiments is the filing date of the subject application, 12/02/03, and thus the rejection under subsection (b) of section 102 appears to be proper.

As to applicants arguments traversing the rejections based on subsection (e) of section 102, the examiner disagrees with the applicants for the following reasons. The Declaration with supporting letter from William H. Shreve, hereinafter “the letter”, are unconvincing. First of all, the applicants aver that “the letter includes a sketch of an embodiment of the subject matter recited in the claims”. On the other hand it is not clear from the Declaration or from the letter the particular embodiment the applicants are referring to. The claims appear to encompass more than one embodiment of the invention, and therefore, the applicants need to clarify which of the embodiments the Declaration is the subject of. This, of course, is so that the examiner can identify which embodiments the applicants believe predate the earliest effective date of the Smith reference.

Secondly, it appears from the letter itself that it is not directed to any of the embodiments that are rejected over Smith. Since applicants have redacted most of

the letter, the only legible portions thereof are portions of the first two pages asking that some patentability search be done and stating that someone is looking forward to the results thereof, and a single page containing two drawing figures. The drawings do not show all of the elements recited in the independent claims, including the claimed nesting engagement. Accordingly, the examiner can not determine how the letter can be said to support a showing that applicant conceived and reduced to practice prior to the invention of Smith, the specific product or products that are rejected over that reference.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./
Primary Examiner, Art Unit 3728